

1 SHARTSIS FRIESE LLP  
 2 ARTHUR J. SHARTSIS (Bar #51549)  
 3 GREGG S. FARANO (Bar #221505)  
 4 KATHERINE R. CALDWELL (Bar #247390)  
 5 One Maritime Plaza, Eighteenth Floor  
 San Francisco, CA 94111  
 Telephone: (415) 421-6500  
 Facsimile: (415) 421-2922  
 Emails: ashartsis@sflaw.com, gfarano@sflaw.com

6 Attorneys for Plaintiff  
 7 GA ESCROW, LLC

8  
 9 UNITED STATES DISTRICT COURT  
 10  
 11 NORTHERN DISTRICT OF CALIFORNIA

12 GA ESCROW, LLC, a Delaware limited  
 13 liability company, as Representative for the  
 Escrow Participants,

14 Plaintiff,

15 v.

16 AUTONOMY CORPORATION PLC, a  
 corporation formed under the laws of  
 England and Wales

17 Defendant.

18 Case No. C08-01784-SI

19  
**FIRST AMENDED COMPLAINT FOR  
 20 FRAUDULENT MISREPRESENTATION;  
 BREACH OF THE IMPLIED COVENANT  
 21 OF GOOD FAITH AND FAIR DEALING;  
 NEGLIGENT MISREPRESENTATION;  
 22 UNJUST ENRICHMENT; ACCOUNTING;  
 BREACH OF CONTRACT**

**JURY TRIAL DEMANDED**

23  
**Judge: The Honorable Susan Illston**

24 Plaintiff GA Escrow, LLC (“GA Escrow,” the “Escrow Participants’ Representative” or  
 25 “Plaintiff”) brings this action against defendant Autonomy Corporation PLC (“Autonomy” or  
 26 “Defendant”) and alleges as follows:

27  
**NATURE OF THE ACTION**

28 1. Plaintiff, the representative of the former shareholders of Zantaz, Inc. (“Zantaz” or  
 the “Company”), brings this action to obtain the return of \$8 million that Defendant, which  
 acquired Zantaz, wrongfully misappropriated to itself. Defendant fraudulently caused the  
 removal of money from an Indemnity Escrow Account, to which these improperly-removed funds  
 should now be returned, along with appropriate interest.

## **PARTIES**

2       2. Plaintiff GA Escrow is a limited liability company organized under the laws of the  
3       State of Delaware with its principal place of business located at 3 Pickwick Plaza, Greenwich,  
4       Connecticut 06830. Zantaz, Inc. is a corporation organized and existing under the laws of the  
5       State of California with its principal place of business located at 5758 West Las Positas Blvd,  
6       Pleasanton, California 94588. GA Escrow was and is the appointed Escrow Participants'  
7       Representative for Zantaz's former shareholders (as well as former holders of vested Company  
8       options and former holders of warrants to purchase shares in the Company) (together, the  
9       "Escrow Participants") in connection with Defendant's acquisition of Zantaz by means of the  
10      merger of Zantaz into a wholly-owned subsidiary of Defendant.

11       3.     Defendant Autonomy is a corporation formed under the laws of England and  
12 Wales with its principal place of business located at Cambridge Business Park, Cowley Road,  
13 Cambridge CB4 0WZ, United Kingdom.

14       4.     Antelope Acquisition Corp. (“Antelope”) is a corporation organized and existing  
15 under the laws of the State of California. Antelope is a wholly-owned subsidiary of Autonomy,  
16 formed by Autonomy for the purpose of acquiring all outstanding securities of Zantaz by means  
17 of a merger of Zantaz into Antelope.

18        5.      U.S. Bank National Association (“U.S. Bank” or the “Escrow Agent”) is a national  
19 banking association doing business in the City of San Francisco in the State of California with its  
20 principal place of business in Minneapolis, Minnesota. U.S. Bank served as the escrow agent for  
21 GA Escrow and Autonomy in connection with the acquisition and merger.

## **JURISDICTION AND VENUE**

23       6. On March 4, 2008, plaintiff filed a complaint against defendant in the Superior  
24 Court of California, County of San Francisco. On April 2, 2008 defendant removed this action to  
25 federal court, pursuant to the diversity jurisdiction provisions of 28 U.S.C. § 1332 and the  
26 removal provisions of 28 U.S.C. § 1441(b).

27       7.     Venue is proper in the Northern District of California pursuant to 28 U.S.C.  
28 1391(a) and (c) because a substantial part of the events giving rise to the claim occurred and

1 Defendant is subject to personal jurisdiction in this judicial district. Additionally, the parties to  
 2 this action have consented to the jurisdiction of the federal courts located in San Francisco,  
 3 California.

4 **FACTUAL BACKGROUND**

5 **The Merger Agreement**

6 8. Zantaz provides electronic data archiving software solutions and services to  
 7 companies throughout the world.

8 9. On or about July 3, 2007, Autonomy, GA Escrow, Antelope and Zantaz entered  
 9 into an Agreement and Plan of Merger (the "Merger Agreement") by which Autonomy, through  
 10 its wholly-owned subsidiary, Antelope, would acquire all of the outstanding shares of Zantaz  
 11 capital stock (the "Merger Transaction"). Pursuant to Section 2.1 of the Merger Agreement, the  
 12 aggregate amount to be paid to the former owners of Zantaz was equal to \$400,000,000 in cash,  
 13 less closing deductions (the "Merger Consideration").

14 10. Pursuant to Section 2.6(c)(i) of the Merger Agreement, an amount equal to  
 15 \$20,500,000 was withheld from the Merger Consideration and placed into escrow. These funds  
 16 were to be available to satisfy potential indemnification claims to which Autonomy might be  
 17 entitled pursuant to Article VIII of the Merger Agreement. To the extent not used to cover such  
 18 indemnification claims, the monies withheld from the Merger Consideration, together with all  
 19 earnings thereon (the "Indemnity Escrow Fund"), were to be paid to the Escrow Participants.

20 11. The Merger Agreement entitled Autonomy to seek indemnification from the  
 21 Indemnity Escrow Fund for various "Losses" as defined in Section 8.2(a). Losses were defined to  
 22 include, among other things, losses or damages arising out of (1) any breach by the Company of  
 23 any representation or warranty contained in the Merger Agreement or (2) any breach by the  
 24 Company of any covenant or agreement contained in the Merger Agreement.

25 12. The Merger Agreement requires all claims for Losses to be made by written notice  
 26 delivered by Autonomy to GA Escrow and the Escrow Agent promptly after discovery of a matter  
 27 giving rise to such a claim.

28 13. The Merger Transaction closed on or about July 23, 2007. As of that date,

1 Autonomy acquired the Escrow Participants' stock in Zantaz, and Autonomy assumed control and  
2 management of Zantaz.

3           14. Pursuant to the Representative Agreement, incorporated into the Merger  
4           Agreement as Exhibit A, and with the approval of the Escrow Participants, GA Escrow was  
5           appointed to act as the representative, attorney-in-fact and agent for and on behalf of the Escrow  
6           Participants. As such, it was granted authority to make decisions and take actions pertaining to  
7           the Merger Agreement, including but not limited to filing this action.

## The Escrow Agreement

9        15. On or about July 20, 2007, GA Escrow, Autonomy, and U.S. Bank entered into an  
10 Escrow Agreement (the “Escrow Agreement”) appointing U.S. Bank as Escrow Agent. As such,  
11 U.S. Bank was to manage the Indemnity Escrow Fund in accordance with the terms of the Escrow  
12 Agreement. The Escrow Agreement is incorporated into the Merger Agreement as Exhibit F.

13        16. Consistent with the Merger Agreement, the Escrow Agreement provided for  
14 Autonomy, at the time of the closing of the Merger Agreement, to deposit \$20,500,000  
15 constituting the Indemnity Escrow Fund, with the Escrow Agent.

16        17.     In accordance with Article VIII of the Merger Agreement, Section 3(b)(ii) of the  
17     Escrow Agreement requires Autonomy to make a written request to both the Escrow Participants'  
18     Representative and the Escrow Agent for the payment of any claim for indemnification for Losses  
19     as defined in Article VIII of the Merger Agreement (a "Payment Request"). Specifically, the  
20     Escrow Agreement requires that such a Payment Request "set forth the amount requested, and in  
21     reasonable detail the specific basis for the determination of the amount of the claim and as to why  
22     Parent Indemnitee [Autonomy] is entitled to the payment of such amount (to the extent then  
23     known by the Parent Indemnitee)...."

## **Autonomy's Purported Notice of Claim**

25        18. On September 11, 2007, Autonomy sent a letter to GA Escrow and the Escrow  
26 Agent purporting to assert certain claims under Section 8.2(a) of the Merger Agreement for  
27 Losses of approximately \$8,000,000 (the “Notice of Claim”). In its letter, Autonomy claimed the  
28 following losses:

1 (1) undisclosed liabilities for fixed assets totaling approximately \$2,000,000;  
2 (2) undisclosed accounts payable totaling approximately \$2,000,000;  
3 (3) inadequate provision for uncollectible accounts receivable of approximately  
4 \$2,000,000; and  
5 (4) inadequate provision for accrued liabilities of approximately \$2,000,000.

6 19. Nothing in Autonomy's Notice of Claim indicated to GA Escrow that it was  
7 fraudulent.

8 20. After the last day for filing an objection to Autonomy's Notice of Claim, GA  
9 Escrow for the first time was advised by a former officer of the Company with knowledge of the  
10 Company's finances that there was no basis for the claimed Losses listed in Autonomy's Notice  
11 of Claim.

12 21. After being so advised, GA Escrow requested that Autonomy provide specific  
13 detail to support its claimed Losses.

14 22. In response to GA Escrow's request, Autonomy refused to provide any  
15 information or documentation, and instead noted only that GA Escrow was too late to object to its  
16 claimed Losses pursuant to the terms of the Escrow Agreement.

17 23. Despite GA Escrow's repeated requests for specific detail to support its claimed  
18 Losses listed in the Notice of Claim, to date Autonomy has failed to provide any specific  
19 information or documentation that substantiates its claims.

20 24. In fact, at the same time it refused to provide GA Escrow with specific support for  
21 its claimed Losses, Autonomy stifled GA Escrow's continuing efforts to verify the accuracy of  
22 Autonomy's claims by cautioning the former Zantaz officer who advised GA Escrow that there  
23 was no basis for such claims against providing assistance to GA Escrow.

24 25. Autonomy's efforts to cut off GA Escrow from the sources of information  
25 necessary to verify Autonomy's claims and Autonomy's responses to GA Escrow's continued  
26 requests for such verification confirmed that there was no valid basis under the Merger  
27 Agreement for the Losses claimed by Autonomy in its Notice of Claim. Even though GA Escrow  
28 has advised Autonomy in writing that a fraud appears to have been committed, Autonomy has

1 failed to provide any information or documentation supporting its claimed Losses or indicating  
 2 why its actions do not constitute fraud.

3 **Autonomy's Deception of GA Escrow and the Escrow Agent**

4 26. Autonomy's failure to provide any support for the Losses claimed in its Notice of  
 5 Claim despite repeated requests by GA Escrow is due to the fact that Autonomy knowingly and  
 6 falsely put forth claims for Losses without having any reasonable factual basis to support such  
 7 Losses.

8 27. In knowingly providing a false Notice of Claim, Autonomy made material  
 9 misrepresentations to GA Escrow and the Escrow Agent, U.S. Bank, with the intention that GA  
 10 Escrow would rely upon those misrepresentations and not object to the Notice of Claim within the  
 11 Objection Period, as defined in the Escrow Agreement, and the Escrow Agent would rely upon  
 12 those misrepresentations and release \$8 million to Autonomy.

13 28. In or around September 26, 2007, in reliance on Autonomy's material  
 14 misrepresentations, U.S. Bank improperly released \$8 million from the Indemnity Escrow Fund  
 15 to Autonomy thereby causing damages to the Escrow Participants.

16 **Deficiency of Autonomy's Notice of Claim**

17 29. In order to preserve its right of appeal, GA Escrow respectfully restates the  
 18 following factual allegations in support of its Breach of Contract claim included in its original  
 19 complaint.

20 30. Contrary to the terms of the Escrow Agreement, Autonomy's purported Notice of  
 21 Claim failed to provide "reasonable detail" for its alleged Losses. As such, the Notice of Claim  
 22 failed to constitute a proper "Payment Request" as required by Section 3(b)(ii) of the Escrow  
 23 Agreement.

24 31. Among its deficiencies, the Notice of Claim was not made for a sum certain.  
 25 Instead, the letter referenced four general types of Losses, as noted above, and claimed that each  
 26 totaled "approximately \$2,000,000." There is nothing in the transaction documents that  
 27 contemplates the payment of any "approximate" amounts.

28 32. Additionally, the Notice of Claim did not state the specific basis in "reasonable

1 detail" for the determination of the amount of the purported Losses. There was no specification  
2 of the purported "liabilities for fixed assets" alleged to be "undisclosed," the specific "accounts  
3 payable" alleged to have been "undisclosed," the specific "accounts receivable" alleged to be  
4 "uncollectible," nor the specific "accrued liabilities" for which it is alleged there was "inadequate  
5 provision."

6           33.    Additionally, the Notice of Claim failed to set forth any explanation as to what, if  
7 any, representation or warranty the Company allegedly breached that would result in Autonomy's  
8 being entitled to payment of any amount under the indemnification provisions of the Merger  
9 Agreement.

## **FIRST CAUSE OF ACTION**

## **Fraudulent Misrepresentation**

2           34.    GA Escrow realleges and incorporates paragraphs 1 through 28 above as though  
3 fully set forth herein.

4       35. Pursuant to the terms of the Escrow Agreement, U.S. Bank acted as an agent of  
5 GA Escrow in connection with the maintenance and distribution of funds from the Indemnity  
6 Escrow Fund.

7       36.    In an effort to obtain a distribution from the Indemnity Escrow Fund, Defendant  
8 knowingly and falsely submitted to GA Escrow and U.S. Bank claims for Losses without having  
9 any reasonable factual basis to support such Losses.

20       37. In reliance on such false representations by Defendant, GA Escrow did not object  
21 to Defendant's claimed Losses until after being advised for the first time, by a former Zantaz  
22 officer with knowledge of the Company's finances, that there was no basis for such claimed  
23 Losses. By that time, U.S. Bank, in reliance on the same false representations by Defendant, had  
24 distributed \$8 million from the Indemnity Escrow Account to Defendant. Defendant submitted  
25 such claimed Losses with the intent that both GA Escrow and U.S. Bank rely upon them and that  
26 U.S. Bank release \$8 million.

27       38. As a result of Defendant's fraudulent misrepresentations GA Escrow and the other  
28 Escrow Participants have suffered damages in an amount to be determined at trial, but currently

1 believed to be \$8 million, plus interest.

2 39. Defendant acted with malice, fraud and oppression in making these  
 3 misrepresentations, warranting the imposition of punitive damages.

4 **SECOND CAUSE OF ACTION**

5 **Negligent Misrepresentation**

6 40. GA Escrow realleges and incorporates paragraphs 1 through 28 above as though  
 7 fully set forth herein.

8 41. Pursuant to the terms of the Escrow Agreement, U.S. Bank acted as an agent of  
 9 GA Escrow in connection with the maintenance and distribution of funds from the Indemnity  
 10 Escrow Fund.

11 42. In an effort to obtain a distribution from the Indemnity Escrow Fund, Defendant  
 12 negligently and recklessly submitted to GA Escrow and U.S. Bank claims for Losses without  
 13 having any reasonable factual basis to support such Losses.

14 43. In reliance on such negligent and reckless representations by Defendant, GA  
 15 Escrow did not object to Defendant's claimed Losses until after being advised for the first time,  
 16 by a former Zantaz officer with knowledge of the Company's finances, that there was no basis for  
 17 such claimed Losses. By that time, U.S. Bank, in reliance on the same negligent and reckless  
 18 representations by Defendant, had distributed \$8 million from the Indemnity Escrow Account to  
 19 Defendant. Defendant submitted such claimed Losses with the intent that both GA Escrow and  
 20 U.S. Bank rely upon them and that U.S. Bank release \$8 million.

21 44. As a result of Defendant's negligent misrepresentations, GA Escrow and the other  
 22 Escrow Participants have suffered damages in an amount to be determined at trial, but currently  
 23 believed to be \$8 million, plus interest.

24 **THIRD CAUSE OF ACTION**

25 **Breach Of The Implied Covenant Of Good Faith And Fair Dealing**

26 45. GA Escrow realleges and incorporates paragraphs 1 through 28 and 34 through 44  
 27 above as though fully set forth herein.

28 46. An implied term of the Merger Agreement and the Escrow Agreement was that the

1 parties would act in good faith to perform the Merger Agreement and the Escrow Agreement, and  
2 that they would take no action to defeat or interfere with or prevent the Agreements from being  
3 performed or to interfere with or prevent GA Escrow and the other Escrow Participants from  
4 realizing the benefits of the Agreements.

5        47.    Defendant has breached the implied covenant of good faith and fair dealing by,  
6 among other things, knowingly and falsely putting forth claims for Losses without having any  
7 reasonable factual basis to support such Losses.

8       48.     As a result of Defendant's breaches of the implied covenant of good faith and fair  
9 dealing, GA Escrow and the other Escrow Participants have suffered damages in an amount to be  
10 determined at trial, but currently believed to be \$8 million, plus interest.

## **FOURTH CAUSE OF ACTION**

## Unjust Enrichment

13 49. GA Escrow realleges and incorporates paragraphs 1 through 28 and 34 through 48  
14 above as though fully set forth herein.

15        50.    Defendant has been unjustly enriched because it has been provided \$8 million  
16 when in fact, under the terms of the Merger Agreement, there was no basis for Defendant's  
17 claimed Losses.

18       51. It is unfair, inequitable and unconscionable for Defendant to obtain and retain such  
19 a windfall and receive unjust enrichment at the expense of the Escrow Participants.

20        52.    Defendant has been unjustly enriched in an amount to be determined at trial, but  
21 currently believed to be \$8 million, plus interest. The entire sum should be returned to the  
22 Indemnity Escrow Fund.

## **FIFTH CAUSE OF ACTION**

## Accounting

25           53.    GA Escrow realleges and incorporates paragraphs 1 through 28 and 34 through 52  
26 above as though fully set forth herein.

27        54. Under the terms of the Merger Agreement, the Escrow Participants are entitled to a  
28 distribution of the Indemnity Escrow Fund less any Losses actually suffered by Autonomy.

1        55.    GA Escrow seeks an accounting of the exact Losses, if any, arising out of any  
2 breaches of any representations, warranties, covenants or agreements in the Merger Agreement so  
3 that it may obtain a full and proper disbursement of the Indemnity Escrow Fund to the Escrow  
4 Participants in accordance with the terms of the Merger Agreement.

## **SIXTH CAUSE OF ACTION**

## Breach Of Contract

7       56.    GA Escrow realleges and incorporates paragraphs 1 through 33 above as though  
8 fully set forth herein.

9        57.    GA Escrow has performed all conditions, covenants and promises required to be  
10      performed on its part in accordance with the terms and conditions of the Merger Agreement and  
11      the Escrow Agreement.

12        58.      Defendant breached the Merger Agreement and the Escrow Agreement by, among  
13 other things, failing to provide a proper Payment Request to GA Escrow and the Escrow Agent.  
14 Defendant purported request was deficient because, among other reasons, (1) it was not made for  
15 a sum certain; (2) it did not state the specific basis in “reasonable detail” for the determination of  
16 the amount of the purported Losses; and (3) it failed to set forth any explanation as to what  
17 representation or warranty the Company allegedly breached that would result in Defendant being  
18 entitled to payment under the indemnification provisions of the Merger Agreement.

19       59. There is no provision in any transaction document for a claim for losses in an  
20 “approximate” amount. Notwithstanding this, Defendant improperly claimed an “approximate”  
21 amount and received \$8,000,000.

22        60.    Further, there was no basis for the \$8,000,000 in alleged “Losses” claimed by  
23 Autonomy.

24       61. As a result of Defendant's breaches of the Merger Agreement and the Escrow  
25 Agreement, GA Escrow and the other Escrow Participants have suffered damages in an amount to  
26 be determined at trial, but currently believed to be \$8 million, plus interest.

## PRAYER

28 **WHEREFORE**, Plaintiff GA Escrow, as Escrow Participants' Representative prays for

1 judgment as follows:

2 1. For the return by Defendant of the \$8 million it received from the Escrow Agent  
 3 for its claims for purported Losses to the Indemnity Escrow Fund, plus interest;

4 2. For an accounting of any and all Losses, as defined in the Merger Agreement;  
 5 claimed by Defendant;

6 3. For general and special damages sufficient to compensate GA Escrow for all  
 7 economic injury suffered as a result of Defendant's misconduct;

8 4. For punitive damages in such amount as the Court or the jury may award;

9 5. For costs of suit incurred herein, including reasonable attorneys' fees; and

10 6. For other and further relief as the Court may deem just and proper.

11 DATED: August 1, 2008

SHARTSIS FRIESE LLP

13 By: /s/ Arthur J. Shartsis  
 14 ARTHUR J. SHARTSIS  
 15 Attorneys for Plaintiff  
 16 GA ESCROW, LLC

**DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a trial by jury.

18 DATED: August 1, 2008

SHARTSIS FRIESE LLP

20 By: /s/ Arthur J. Shartsis  
 21 ARTHUR J. SHARTSIS  
 22 Attorneys for Plaintiff  
 23 GA ESCROW, LLC

24 7602\001\GFARANO\1522833.8